

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**Case No. A-6623
PETITION OF JAMES AND MARY LORETO**

**Case No. S-695
PETITION OF DR. JAMES A. LORETO**

OPINION OF THE BOARD
(Opinion Adopted July 10, 2019)
(Effective Date of Opinion: July 19, 2019)

Case No. A-6623 is an application, under Section 59-7.3.2 of the Montgomery County Zoning Ordinance, for nine variances. The subject property is Lot P6, Block 6, Eugene A. Smith's Addition to Silver Spring Subdivision, located at 711 Wayne Avenue, Silver Spring, Maryland 20910, in the R-60 Zone. The subject property is currently the subject of Land Acquisition Petition Case Number 434948-V (hereafter referred to as the "Taking Action"), filed by the State Roads Commission of the State Highway Administration. The Taking Action is to accommodate the future alignment of the Purple Line and will affect a portion of the property's front lot line along Wayne Avenue. As such, the Department of Permitting Services ("DPS") has determined that the following landscape/parking design variances are required:

A variance of one (1) parking space from the total required parking of twelve (12) spaces, as calculated under Sections 59-6.2.3 and 59-6.2.4 of the 2014 Zoning Ordinance, made applicable by Section 59-7.7.1.B.3.b of the 2014 Zoning Ordinance. DPS notes that the Board has the authority to waive off-street parking requirements under Section 59-E-4.5 of the 2004 Zoning Ordinance, "which remains the applicable code for the Board's authority and relevant provisions." [Variance "A"]¹

A variance of 7.1 feet from the standards of Section 59-E-2.81 of the 2004 Zoning Ordinance, which requires that the parking facility be setback twenty-five (25) feet from the front lot line. The revised parking area will be approximately 17.9 feet from the new property line. [Variance "B"]

¹ Because of the number and complicated nature of the variances requested, and because of counsel's desire to group them for purposes of the hearing, counsel for the Petitioners assigned letters to each of the variances at the hearing.

A variance of ten (10) feet from the standards of Section 59-E-2.71 of the 2004 Zoning Ordinance, which require that a parking facility adjacent to a right-of-way provide a landscaping strip of at least ten (10) feet in width, because no landscaping strip will be provided along Wayne Avenue. [Variance "C"]

A variance from the requirements of Section 59-E-2.93(d) of the 2004 Zoning Ordinance, which require that at least 30% of the paved area be shaded. DPS notes that "[w]ith the removal of the landscaped area necessitated by the Wayne Avenue taking, the property will lose its two shade trees and not meet this standard." [Variance "D"]

A variance of seven (7) feet along the northern/side property line from the standards of Section 59-E-2.72 of the 2004 Zoning Ordinance. Section 59-E-2.72 requires that a landscape area be provided along the perimeter of a parking facility other than a right of way of at least four (4) feet, but not less than the setback in Section 59-E-2.81 where it adjoins a residential zone. In accordance with Section 59-E-2.81 of the 2004 Zoning Ordinance, a side setback of seven (7) feet applies to this parking facility because no landscaping is provided. [Variance "E"]

A variance of twenty (20) feet along the western/rear property line from the standards of Section 59-E-2.72 of the 2004 Zoning Ordinance. Section 59-E-2.72 requires that a landscape area be provided along the perimeter of a parking facility other than a right of way at least four (4) feet, but not less than the setback in Section 59-G-2.81 where it adjoins a residential zone. In accordance with Section 59-G-2.81 of the 2004 Zoning Ordinance, a rear setback of 20 feet applies to this parking facility because no landscaping is provided. [Variance "F"]

A variance of fourteen (14) feet along the northern/side property line from the standards of 59-E-2.83(b) of the 2004 Zoning Ordinance, which require that the setbacks of parking and loading facilities for special exception uses in a residential zone be equal to the setback for the front and rear yard and twice the side yard setback. The applicable side setback for this property is seven (7) feet; twice that is fourteen (14) feet. [Variance "G"]

A variance of twenty (20) feet along the western/rear property line from the standards of 59-E-2.83(b) of the 2004 Zoning Ordinance, which require that the setbacks of parking and loading facilities for special exception uses in a residential zone be equal to the setback for the front and rear yard and twice the side yard setback. The applicable rear setback is twenty (20) feet. [Variance "H"]

A variance from the requirements of 59-E-2.83(c) of the 2004 Zoning Ordinance, which require that parking be effectively screened from all abutting lots and right-of-ways. Per DPS, "[t]here is no screening along the western or northern sides of the property. Along the adjacent right-of-ways of Wayne Ave. and Cedar Street on the eastern and southern property lines, the Purple Line alignment will impact areas with existing hedge screening that will also necessitate a variance." [Variance "I"]

Case No. S-695 is a special exception that was granted effective August 1, 1979, under Section 59-G-2.36 of the then-applicable Zoning Ordinance (Chap. 59, Mont. Co. Code 1977, as amended), to permit a non-resident medical practitioner's office. It has been amended several times since then, notably in 1994 to allow changes to the parking lot. In addition to the requested variances, Dr. Loreto is seeking an administrative modification of this special exception to reflect the changes that will affect a portion of the subject property's frontage along Wayne Avenue and, to a lesser extent, Cedar Street, as a result of the Taking Action needed to accommodate the future alignment of the Purple Line.

The Board of Appeals held a hearing on the variance application on Wednesday, July 10, 2019, and agreed to consolidate consideration of the requested administrative modification with the variance proceeding. Soo Lee-Cho, Esquire, appeared on behalf of Petitioners James and Mary Loreto. Dr. James Loreto testified in support of the requested variances and administrative modification. Somer Cross, who was accepted as an expert in land planning, also appeared as a witness for the Petitioners and testified in support of the variances and administrative modification. Ed Elder, an engineer with the Purple Line, also testified.

The subject property is Lot P6, Block 6, Eugene A. Smith's Addition to Silver Spring Subdivision, located at 711 Wayne Avenue, Silver Spring, Maryland 20910, in the R-60 Zone.

Decision of the Board: Variances and Administrative
Modification **GRANTED**.

EVIDENCE PRESENTED

1. The Board of Appeals granted Case No. S-695, effective August 1, 1979, under Section 59-G-2.36 of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1977, as amended) to permit a non-resident medical practitioner's office for two doctors. The Board has granted various administrative modifications to the special exception over the years. In 1994, the special exception was modified to "permit additional parking with new landscaping," and in 1998, variances from the parking standards were granted "to permit the design of the parking lot as proposed in a site plan approved by the Board." See Exhibits 3 and 18 (March 26, 1998, BOA Opinion in Case No. A-4170).²

2. The Petitioners' Statement of Justification ("Statement") indicates that:

² All Exhibit numbers in this Opinion refer to the Exhibit numbers in Case No. A-6623. Some of the Exhibits in this case are also included in the record for special exception Case No. S-695. Exhibit 18 in this case is part of Exhibit 61(a) in Case No. S-695. Exhibit 19 in this case is a copy of Exhibit 61 in Case No. S-695. Finally, Exhibits 16 and 17 in this case are the same as Exhibits 61(b) and (c), respectively, in Case No. S-695.

The State of Maryland is in the process of obtaining property along Wayne Avenue to accommodate the Purple Line Transit Project ("Purple Line") which will run along that street. Plans for the construction of the Purple Line will permanently alter the eastern lot line of the Subject Property thereby affecting the previously approved site plan for the site.

* * * * *

Plans for the construction of the Purple Line show that a 389 square foot portion of the eastern part of the Subject Property will be taken to build the transit project, subject to Land Acquisition Petition Case No. 434948-V filed in the Montgomery County Circuit Court by the State Roads Commission of the State Highway Administration (hereinafter referred to as the "Taking Action"). In addition, a 400 square foot perpetual easement will be placed on the Subject Property for use by the State as a perpetual stormwater management easement along the Wayne Avenue boundary. Finally, a temporary easement of 794 square feet will be in place and affect the site during the construction of the transit project. As a result, and at no fault of the property owner, the existing parking and landscaping on the property will be significantly altered by the Purple Line project.

The Statement indicates that while the Taking Action will not affect the compliance of the existing structure with the applicable setbacks, it will "have a significant impact on the Subject Property's compliance with parking and landscaping requirements." The Statement then proceeds to list the variances that the County's Department of Permitting Services ("DPS") has determined are necessary as a result of the Taking Action. See Exhibit 3.

3. The Statement indicates, with respect to the required findings in Section 59-7.3.2.E.2.a.i of the Zoning Ordinance, that "[t]he extraordinary conditions peculiar to this site are the imposition of a State easement and a modification of the property line due to a State Taking Action. As a result, the existing development and design has been modified and cannot meet all of the current approved or required development standards." The Statement further indicates, with respect to Section 59-7.3.2.E.2.a.ii, that "[t]he property will be rendered legally nonconforming due to a State Taking Action to facilitate the Purple Line Project. The variances requested herein are necessary to bring the site into conformance with the landscaping and parking requirements of the Zoning Ordinance, and otherwise allowable pursuant to Section 59.7.7.1.F." It states with respect to Section 59-7.3.2.E.2.b that "[t]he special circumstances necessitating these variances and the modification of the special exception are the result of the State Takings Action Case No. 434948-V and are not caused by any actions of the applicant."

With respect to Section 59-7.3.2.E.2.c, the Statement indicates that "[t]he requested variances are the minimum necessary to provide sufficient parking and landscaping on the property and to accommodate the lost land as a result of the Taking Action." The Statement states that the grant of the variances would not impair the intent and integrity of the applicable master plan, and will not be adverse to the use or enjoyment of abutting neighbors, noting that "[t]hough the variances request a waiver of the

landscape buffer from the parking lot, there will be a State easement for stormwater runoff and the additional buffer of the Purple Line from the activities of this site to the properties to the east and south,” and that “[t]he properties to the north and west of the subject site, for which the landscaping buffer in a residential zone requirement is meant to benefit, have existed with the parking design as it is requested herein since the parking design was first approved in 1998, and likely before. There has been no adverse reaction to this design.” See Exhibit 3.

4. The Statement at Exhibit 3 indicates that in addition to seeking the grant of the listed variances, the Petitioners are also requesting:

... [t]hat the Board reaffirm that the two (2) previously approved variances under Case No. A-4170 will be retained on the property as follows:

a. A variance of 9' from the standards of 59-E-2.41 which states that a driveway may not be less than 20' in width because the driveway on this site is only 11' in width. [Variance “J”]

b. A variance of 10' from the standards of 59-E-2.71 requiring that parking facilities have a 10' wide landscape strip adjacent to a right of way because this parking facility is located on the lot line abutting Cedar Street. [Variance “K”]

5. In variance Case No. A-4170, in the record at Exhibit 18, the Board determined that the subject property was unique as follows:

The Board finds that the subject property is a corner property, and therefore the development must observe two large front yard setbacks. As a result, the house was placed on the property very far to the rear, effectively eliminating a usable rear yard. Parking could not be placed anywhere but in the front and side yards. Furthermore, the shape is elongated, and the length is twice the width. The property presents no other options for the location of parking.

With respect to the practical difficulty and undue hardship caused by the property's uniqueness, the Board, in Case No. A-4170, made the following finding:

The Board finds that the petitioner would suffer practical difficulty, and undue hardship, if the variances are denied. The use requires 13 parking spaces, and the use has been approved since 1979. The landscape strip requirement was not in place when the house was constructed or when the special exception was approved. The Board understands that Dr. Loreto constructed the parking lot revisions after receiving a building permit that DEP should not have issued without proof of Board of Appeals approval of the modification. However, the real difficulty and hardship derives from the configuration of the lot and the placement of the existing structures on the lot, both of which eliminate options for the location of parking spaces except where they have been proposed.

6. In granting the variances requested in Case No. A-4170, the Board also approved a site plan for the parking lot on the subject property that, based on DPS's April 1, 2019, determination of the variances required for this site, effectively permitted certain features which should have required variances. See Exhibits 6 and 18. The Petitioners are now seeking to have those omissions cured.

7. With respect to the requested administrative modification, the Ms. Lee-Cho's letter of May 15, 2019, states that the "[c]onstruction related to the Purple Line Project will result in the State of Maryland taking a portion of the Subject Property, thereby necessitating a change to the layout of the existing parking lot used for the approved non-resident medical office located on the site," and that the modification request is to "amend the special exception approval to incorporate changes to the site's parking lot layout and other landscaping/buffer areas resulting from the Purple Line taking." See Exhibit 19. Ms. Lee-Cho includes two plans with her letter, the "Temporary Purple Line Construction Plan" and the "Permanent Post-Purple Line Plan," which she asks be approved and incorporated into the record for the special exception. See Exhibits 16 and 17. She asks that the administrative modification request and the request for variances be considered together, and that her client be permitted to pay the higher of the two fees.

8. At the hearing, Dr. Loreto thanked the Board for taking the time to consider his requests. He testified that he has held this special exception since 1979, that the Purple Line was causing changes to the size and shape of his property, and that he was hoping today to resolve any resultant zoning compliance issues.

9. Somer Cross testified in support of the proposed variances and administrative modification, and was accepted as an expert in land planning. Ms. Cross testified that a number of the variances requested were occasioned by the public taking of a portion of the subject property for the Purple Line Transit Project, which had the effect of changing the Petitioners' lot line along the eastern side, and to some extent, the southern side. She testified that the other variances requested, primarily along the western and northern sides of the property, were not related to the Purple Line construction, but rather were additional variances that DPS has identified as being needed to allow the unaffected portions of the parking lot and related landscaping to remain as they are, and as approved by the Board in 1998.

Ms. Cross testified that Section 59-7.7.1.F of the Zoning Ordinance states that "[a] lawful structure or surface parking lot located on a lot reduced in area by a public acquisition that would render the structure or parking lot nonconforming is legal and the structure or parking lot may be repaired, altered, or reconstructed." She testified that pursuant to this Section, the Taking Action renders the property nonconforming and hence unique under Section 59-7.3.2.E.2.a.ii for the purpose of granting the variances. She further testified that in Case No. A-4170, the Board had previously found that the subject property was unique because the elongated shape of the property, which is twice as long as it is wide, and the application of corner lot setbacks to the property, resulted in

a very limited area for the placement of the primary structure and eliminated a usable rear yard, forcing parking to be located in the front or side yards.

Using Exhibit 17, Ms. Cross showed the Board the area of acquisition, which is shaded in orange (389 square feet), the area of the perpetual easement, which is shaded in purple (400 square feet), and the area of the temporary easement, which is shaded in yellow (794 square feet). She testified that the Taking Action will permanently delete two parking spaces, and will affect a third during the pendency of construction. She testified that the landscaping along Wayne Avenue would be removed, including two trees, and that the existing hedge along the walkway from Wayne Avenue to the primary structure will be impacted. Ms. Cross testified that a portion of the hedge along Cedar Avenue will also be removed. She noted that the setbacks provided will change because the lot lines are being changed. Ms. Cross then went through each of the requested variances using large Exhibit 13 (Annotated Post-Purple Line Plan), referring to the individual variances by letter and stating whether they were needed as a result of the Taking Action. She circled the letters of the variances occasioned by the taking in red pen (variances A, B, C, D, and I). She testified that variances E through H are for existing parking spaces which were permitted by the Board in 1998 with no landscaping. She noted that residential houses abut the subject property to the north and west, that the driveway for the property to the west is close to the subject property's western lot line, and that there is a fence along the subject property's northern lot line. With respect to variance I, Ms. Cross clarified that part of this request was due to the Taking Action, and part was to make legal conditions which have existed since at least 1998. See Exhibit 13. She noted that variances J and K were granted by the Board in Case No. A-4170, and that the Petitioners are seeking reaffirmation of those variances so that all of the variances pertaining to this property can be contained in a single document.

Ms. Cross testified that the circumstances necessitating the grant of the requested variances are not the result of any actions by the Petitioners, noting that the variances arise from the Taking Action and existing conditions that were previously approved. She testified that the requested variances are the minimum needed to bring the post-taking property into compliance with the Zoning Ordinance, and that the grant of these variances will not impair the intent and integrity of the applicable master plan. Ms. Cross testified that the grant of the variance will not be adverse to abutting or confronting property owners, noting that the Wayne Avenue side of the property will be buffered by the Purple Line, and that the remainder of the variances are for conditions that have existed for at least 20 years. She submitted a letter of support for the grant of the requested variances from the owner of the abutting property to the west, and stated that they had tried to secure a letter from the abutting neighbor to the north, but had difficulty locating the owner of that property. See Exhibit 15.

10. In response to a Board question asking what aspects of the Purple Line construction would occupy the portion of the property being taken, Ed Elder, an engineer with the Purple Line, testified that there would be an eight (8) foot wide sidewalk and a five (5) foot grassy strip. He testified that at present, there was no plan to replace the trees that were being removed from the subject property, and indicated that replacement

would be up to the County. He testified that the Purple Line follows the street to the right (east) of the subject property. See Exhibit 14(e). Mr. Elder testified that the perpetual easement is for drainage, and that the temporary easement is for grading and other work. He stated that if they were able to save the existing hedge in the course of construction, they would.

FINDINGS OF THE BOARD

Based on the binding testimony of the Petitioners' witnesses and the evidence of record, the Board finds that the requested variances can be granted. The variances comply with the applicable standards and requirements set forth in Section 59-7.3.2.E of the Montgomery County Zoning Ordinance, as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board adopts the findings it made in Case A-4170 regarding the physical characteristics of the subject property, namely that it is twice as long as it is wide, and further finds that when the applicable setbacks are applied to the property, the resultant buildable envelope is very restricted on account of the property's long, thin shape, causing the primary structure to be located on the property in such a way as to preclude the location of a parking lot behind that structure. Thus the Board finds, as it did in 1998, that these conditions constitute an unusual condition peculiar to the subject property.

Section 59.7.3.2.E.2.a.ii the proposed development uses an existing legal nonconforming property or structure;

The Board finds, based on the Statement and the testimony of Ms. Cross, that the existing parking lot will be rendered legally nonconforming due to the Taking Action needed to facilitate the Purple Line Transit Project. See Exhibit 3. The Board further finds that the variances requested are necessary to bring existing and resultant features of this nonconforming parking lot into conformance with the landscaping and parking requirements of the Zoning Ordinance. Thus the Board finds that the proposed development uses a legal nonconforming structure, in satisfaction of this element of the variance test.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds, based on the Statement and the testimony of Ms. Cross, that the special circumstances necessitating these variances (and the modification of special

exception Case No. S-695) are the result of the State Takings Action Case No. 434948-V and previously-approved conditions, and are not caused by any actions of the Petitioners.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the Statement and the testimony of Ms. Cross, that the requested variances are the minimum necessary to allow the current parking and landscaping conditions, previously accepted by the Board in 1998, and to accommodate necessary changes to those conditions that were or will be occasioned by the loss of land due to the Purple Line Taking Action. The Board emphasizes in finding that these variances are the minimum necessary that the Petitioners are not proposing any changes to the existing site beyond those directly related to the taking, and are not proposing any change to the usage of the site beyond the taking-related physical changes to the parking lot and landscaping. Thus the Board finds that the requested variances are the minimum needed to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds, based on the Statement and the testimony of Ms. Cross, that the grant of these variances will continue the existing and longstanding use of this property, and thus can be granted without impairment to the intent and integrity of the North and West Silver Spring Master Plan (2000).

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, based on the Statement, the testimony of Ms. Cross, and the letter of support from the abutting property owner to the west, that the grant of the requested variances will not be adverse to the use or enjoyment of abutting or confronting neighbors. The Board notes in support of this that the requested variances are intended to allow the existing parking lot and landscaping, as modified by the Purple Line taking, to continue as they have for at least 20 years. The Statement notes that there will be a stormwater easement along the east side of the property, and that this side of the property will also be buffered from neighboring properties by the Purple Line. The Statement further notes that the grant of the requested variances will not change the conditions to the west and north, and while the record indicates there will be some changes along the east side of the southern property line due to the taking, the exhibits of record seem to show that the west side of that property line and the existing usage in that area is not changing. See Exhibits 3, 13, 16, and 17. Finally, the Board notes that the record contains a letter of support for the grant of the requested variances from the owner of the abutting property to the west. See Exhibit 15.

In addition, based on the May 15, 2019, letter from Ms. Lee-Cho and the evidence of record, the Board finds that the requested administrative modification of special exception Case No. S-695 can be granted. Because Case No. S-695 was approved prior to October 30, 2014, under Section 59-7.7.1.B of the current Zoning Ordinance, this modification request must be reviewed under the standards and procedures in effect on October 29, 2014, unless the applicant requests otherwise. Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance (2004) provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that the proposed modification, which would amend the special exception approval to incorporate changes to the property's parking lot layout and other landscaping/buffer areas, as permitted by the variances granted herein and caused by the Purple Line taking, so that the final site plan/parking lot layout shall be as shown on Exhibit 17,³ will not substantially change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. The Board notes that the limited physical changes (landscaping and parking lot layout) that are being made to the property are a result of the Taking Action for the Purple Line construction.

Accordingly, on a motion by Stanley B. Boyd, Vice Chair, seconded by John H. Pentecost, Chair, with Bruce Goldensohn, Katherine Freeman, and Jon W. Cook in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that Ms. Lee-Cho's request that the variances and administrative modification be consolidated before the Board, and that the Petitioners be allowed to pay the higher of the two fees, is granted;

On a motion by John H. Pentecost, Chair, seconded by Jon W. Cook, with Stanley B. Boyd, Vice Chair, Bruce Goldensohn, and Katherine Freeman in agreement:

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that requested variances, set forth above, are **granted**, and that the two variances granted in Case No. A-4170 are reaffirmed, subject to the following condition:

1. The Petitioners are bound by the testimony and exhibits of record;

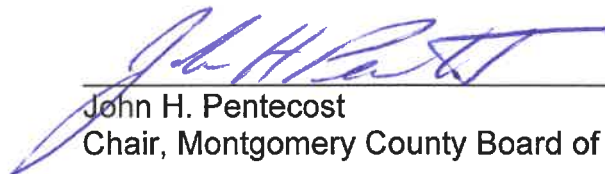
and

³ This site plan is Exhibit 61(c) in Case No. S-695.

On a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Stanley B. Boyd, Vice Chair, Bruce Goldensohn, and Jon W. Cook in agreement:

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to administratively modify this special exception as described herein and in Ms. Lee-Cho's letter of May 15, 2019, and shown on Exhibit 17,⁴ is granted, and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.


John H. Pentecost
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of July, 2019.


Barbara Jay
Executive Director

NOTE:

Regarding the variances:

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a

⁴ Again, Exhibit 17 in this case is the same as Exhibit 61(c) in Case No. S-695.

party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

Regarding the Administrative Modification

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.